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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,490

11/13/2003

Anne Dussaud

J6866(C)

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EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

07/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/712,490	Applicant(s) DUSSAUD ET AL.	
	Examiner JEFFREY G. HOEKSTRA	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice of Amendment

1. In response to the amendment filed on 05/05/2008, amended claims 1 and 5 and new claim(s) 17-20 is/are acknowledged. The current rejections of the claims are *withdrawn*. The following new and reiterated grounds of rejection are set forth:

2. As a preliminary matter, the Examiner notes the amendment to the claims filed 05/05/2008 appears to be non-compliant because the claim status identifiers for claims 17-20 should no longer read “(new)” but conversely “(previously presented)”. However in the interest of advancing prosecution, the Examiner is assuming Applicant inadvertently did not correct the status identifiers and is treating them on the merits as being in proper form. The Examiner respectfully directs Applicant's attention to this matter.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 3-6, 8-11, and 17-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, specifically Flament et al. (“Finger perception metrology. Correlation between friction force and acoustic emission”), hereinafter Flament.

5. For claims 1, 3-6, and 8-11, Flament discloses a tactile acoustic emission measurement and analysis apparatus (Flament et al, pages 168-169), comprising: means for acoustic signal- generating, collecting, storing, displaying, and correlating of

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frictional forces, wherein said frictional forces are capable of being operably generated via animal skin on one area rubbing animal skin on another area (i.e. skin/skin frictional forces), and wherein said apparatus is capable of use as a clinical evaluation tool of skin attributes (Flament et al, pages 168-169). Said apparatus is capable of being used by consumers or clinicians (e.g. a beautician or professional advisor) to study/evaluate the impact the effect of the application cosmetic compositions that affect skin attributes, including: hydration, texture, roughness, porosity, wrinkles, and pathologies of cutaneous tissue (psoriasis, eczema, dry skin, etc...) (Flament et al, pages 168-169) and (b) a medium for indicia of at least said two said skin attributes (i.e. test results) that allows said clinician to distinguish the effect of said application of cosmetic composition (Flament et al, pages 168-169). The apparatus as disclosed by Flament is capable of being placed alongside a container holding said cosmetic composition and facilitating cosmetic composition selection based on the determined skin attributes.

6. For claims 17-20, Flament discloses a system that is used in air, wherein the acoustic emission signal is generated from a hand or finger and a second body part (Flament et al, pages 168-169).

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flament in view of Fleming (Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, Fleming "Mobile, multimedia

computing for improved clinicopathologic correlation in dermatopathology"). Flament discloses the claimed invention as set forth above except for expressly disclosing a means for digitally displaying test result signals via the internet and/or handheld software. Fleming teaches a means for digitally displaying test result signals via the internet and/or handheld software (Fleming, pages 170-171). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. All of the component parts are known in Flament and Fleming. The only difference is the combination of the component parts into a single device. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the components as taught by Flament with the components as taught by Fleming to achieve the predictable results of providing an alternate means to display diagnostic data.

Response to Arguments

9. Applicant's arguments filed 05/05/2008 with respect to the anticipatory and obviousness rejections of the claims under Flament have been fully considered but they are not persuasive. Applicant argues Flament does not disclose, teach, and/or fairly suggest an apparatus, comprising *inter alia*: creating and measuring acoustic emission signals from a body resulting from skin rubbing skin frictional forces. The Examiner disagrees, maintains the rejection as set forth and reiterated above, and in response notes the following:

10. In response to applicant's argument that Flament teaches away from the present claims which create emission signals representing skin/skin frictional forces resulting from a body contacting skin on skin, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

11. In the instant case, the Examiner notes that (a) Flament discloses "We have established a good correlation between the force of friction and the acoustic signal, so the measures made with the finger, provided with an acoustic sensor on the skin, allow to the clinicians and to the cosmetic industry to estimate the sensory properties while making a natural gesture of the touch. The device can be used to study the impact of a cosmetic formulation on the skin by evaluating the variations of sweetness, adhesion but especially effect of hydration as well as pathologies of the cutaneous tissue (psoriasis, eczema, dry skins...)" and/or (b) the apparatus as disclosed by Flament is capable of the intended use or functional limitations comprising "by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces".

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY G. HOEKSTRA whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J.H./
Jeff Hoekstra
Examiner, Art Unit 3736

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/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736